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October 13, 1998

VIA HAND DELIVERY

Megalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

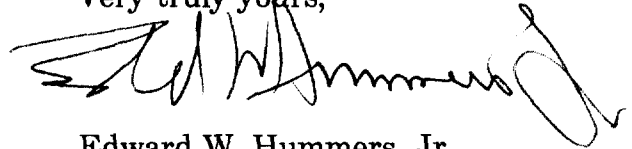
Re: CS Docket No. 98-120
Carriage of the Transmissions
of Digital Television Broadcast Stations
Amendments to Part 76 of the
Commission's Rules

Dear Ms. Salas:

Transmitted herewith, on behalf of Board of Governors of the UPN Affiliates Association, a voluntary association of television stations affiliated with the new United Paramount Television Network, are an original and 9 copies of its Comments in CS Docket No.98-120.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.

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Enclosure

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**Before the
Federal Communications Commission
Washington, D. C. 20554**

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In the Matter of)	
)	
Carriage of the Transmissions)	CS Docket No. 98-120
of Digital Television)	
Broadcast Stations)	
)	
Amendments to Part 76)	
of the Commission's Rules)	

**COMMENTS OF THE BOARD OF GOVERNORS
OF THE UPN AFFILIATES ASSOCIATION**

The Board of Governors of the UPN Affiliates Association hereby comments in support of mandatory must-carry of the digital and NTSC broadcast signals of all commercial television stations by cable systems in the United States. In support thereof, the following is stated:

The Board of Governors is the governing body of the UPN Affiliates Association ("UPN Affiliates"), a voluntary association of television stations affiliated with the new United Paramount Television Network. Presently there are 101 primary UPN affiliates and 49 secondary affiliates serving American viewers. The survival of the UPN network is dependent upon the distribution of network programming by its affiliates who, in turn, are substantially dependent upon cable systems to reach 70 percent of the viewers in the U.S. Cognizant of that interdependence, the UPN Affiliates strongly support the imposition of a must-carry obligation upon all cable systems in order to provide the maximum number of viewers in the country with the opportunity to receive and view

UPN network programming and the other diverse programming broadcast by those network affiliates.

The Commission has required the conversion of the present NTSC system of television transmission to digital television. Its reasons for doing so have been clearly stated in *Fifth Report and Order*, MM Docket 87-268, 12 FCC Rcd 12809,12811-12 as follows:

[W]e wish to promote and preserve free, universally available, local broadcast television in a digital world. Only if DTV achieves broad acceptance can we be assured of the preservation of broadcast television's unique benefit: free, widely accessible programming that serves the public interest. DTV will also help ensure robust competition in the video market that will bring more choices at less cost to American consumers. Particularly given the intense competition in video programming, and the move by other video programming providers to adopt digital technology, it is desirable to encourage broadcasters to offer digital television as soon as possible. We make decisions today designed to promote the viability of digital television services. Digital broadcasters must be permitted to succeed in a competitive market and by doing so, attract consumers to digital. In addition, broadcasters's ability to adapt their services to meet consumer demand will be critical to successful initiation of DTV.

In pursuit of that goal, the Commission has ordered the rapid deployment of DTV service in the U.S. Television licensees have responded and 42 stations will begin DTV transmission next month. *Broadcasting & Cable*, October 12, 1998, p. 10. The Commission's deployment schedule is consistent with the Congressional mandate in the Balanced Budget Act of 1997, 47 U.S.C. § 336(c), which establishes December 31, 2006 as the DTV conversion date, subject to change if DTV receiver penetration does not meet prescribed levels.

The Commission's goal will come to fruition only if must-carry is extended to DTV. Today, cable television is the master antenna to receive broadcast television signals in more than 70 percent of country. The cable industry has made clear in its opposition to the imposition of DTV must-carry that it will not carry **all** of the DTV signals available in a market unless required to do so. That is particularly so with regard to affiliates of the new networks and independent television stations. As the Supreme Court agreed in *Turner Broadcast System v. FCC*, 117 S.Ct. 1174, 1192:

[I]f viewers are faced with the choice of sacrificing a handful of broadcaster stations to gain access to dozens of cable channels (plus network affiliates), it is likely they would still subscribe to cable even if they would prefer the dropped television stations to the cable programming that replaced them. Substantial evidence introduced on remand bears this out: With the exception of a handful of very popular broadcast stations (typically network affiliates), a cable system's choice between carrying a cable programmer or broadcast station has little or no effect on cable subscriptions, and subscribership thus typically does not bear on carriage decisions. Citations omitted.

Hence, there is no economic incentive for cable systems to carry television stations other than the old established networks. Failure to carry the UPN stations would directly adversely affect them and would indirectly strengthen their network competitors. Furthermore, the greater the diversity of UPN affiliate programming and the more defined is the niche programming broadcast by UPN affiliates and independent stations, the less likely cable systems are to voluntarily carry such stations. Such programming is an unwanted competitor to niche national cable channels. Significantly, however, the national cable channels do not include the local programming that is the vital part of the off-the-air television broadcast system.

The Cable Television Consumer Protection and Competition Act of 1992, requires "a cable operator of a cable system with more than 12 usable activated channels to carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system." 47 U.S.C. § 534(B)(1)(b). This statutory provision is not limited to NTSC signals and clearly imposes an obligation upon cable systems to carry DTV signals as well as NTSC signals. The public will be served only if cable subscribers are able to receive **both** the NTSC and DTV signals during the transition period.

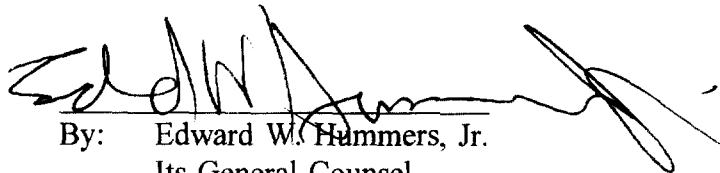
UPN Affiliates are concerned about the uncertainty surrounding the DTV must-carry rules. As stations with smaller budgets than established network stations, the timing of the construction of digital facilities is critical, particularly in the smaller television markets. It is unlikely that digital television, *per se*, will result in larger audiences or increased revenues for UPN affiliates. It is expected to be an unrewarded cost of doing business. The uncertainty of carriage on cable systems is likely to delay the implementation of DTV by such smaller stations.

If the full promise of DTV is to be brought to the viewers of this country, the entire digital signal must be passed through by cable systems, without modification or degradation. If cable systems are permitted to choose the form and quality of the DTV signal to be distributed, there is every incentive to pass through only the minimum signal that complies with the Commission's rules. Cable economics create an incentive to use as little bandwidth as is possible and impose a disincentive to distribute the highest quality picture to compete with cable programming.

Lastly, it is imperative that cable operators be required to deliver all local analog and digital signals on the basic tier of service. If placed on a premium tier at a higher price, much of the population will elect not to pay the higher fee and will be excluded from receiving digital programming.

Respectfully submitted,

Board of Governors of the
UPN Affiliates Association


By: Edward W. Hammers, Jr.
Its General Counsel

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